

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE ACTOS ANTITRUST LITIGATION THIS DOCUMENT RELATES TO: ALL END-PAYOR PLAINTIFF ACTIONS	Master File No. 1:13-cv-09244-RA-SDA
--	--------------------------------------

**END-PAYOR PLAINTIFFS' MOTION FOR AN EVIDENTIARY HEARING
REGARDING CLASS CERTIFICATION**

End-Payor Plaintiffs (“EPPs”) move for an evidentiary hearing in relation to their pending motion for class certification to allow for both oral argument and live testimony from their expert, Ms. Laura Craft, MPH.

EPPs bear the burden of establishing the requirements of class certification. *See In re Petrobas Sec.*, 862 F.3d 250, 260 (2d Cir. 2017). Although “courts in this Circuit employ a liberal rather than restrictive construction of Rule 23,” the Court is still required to conduct a “rigorous analysis” in deciding whether to grant class certification. *In re Air Cargo Shipping Services Antitrust Litig.*, 06-MD-1175 JP VVP, 2014 WL 7882100, at *29 (E.D.N.Y. 2014). EPPs believe that testimony from Ms. Craft will aid the Court in conducting this analysis and ruling on EPPs’ pending motion. Defendants’ opposition to EPPs’ motion largely focuses on class membership issues that fall within Ms. Craft’s specialized expertise. EPPs believe live testimony from Ms. Craft will be helpful to explain and answer any questions regarding the pharmaceutical data and how available data and other information can be used to confirm class membership and exclusion criteria in a manageable fashion.

EPPs propose the following format for the hearing:

Event	Timing
Opening Argument	½ hour per party
Examination of Laura Craft	1 hour per party
Examination of Defendants’ Expert (if any)	1 hour per party
Closing Argument	½ hour per party

Courts in similar pharmaceutical antitrust cases have allowed for and benefited from the ability to examine experts, including Ms. Craft, whose opinions underlie the parties’ positions. *See, e.g., In*

re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litig., 335 F.R.D. 1, 10-11, 30 (E.D.N.Y. 2020) (granting class certification following a two-day evidentiary hearing and oral argument; finding that “Ms. Craft ... credibly and persuasively testified” regarding class membership issues); *In re Lipitor Antitrust Litig.*, 3:12-cv-02389-PGS-DEA, Order, ECF No. 1267, (D.N.J. Jul. 24, 2023) (allowing evidentiary hearing); *In re Zetia (Ezetimibe) Antitrust Litig.*, 2021 WL 3704727, at *4 (E.D. Va. Aug. 20, 2021) (same); *In re Loestrin 24 FE Antitrust Litig.*, 410 F. Supp. 3d 352, 386 (D.R.I. 2019) (same). Accordingly, EPPs respectfully request that the Court grant their motion for an evidentiary hearing.

Dated: May 20, 2024

Respectfully submitted,

/s/ Steve D. Shadowen

Steve D. Shadowen*

Matthew C. Weiner

Tina Miranda

Deirdre Mulligan

HILLIARD & SHADOWEN LLP

1135 W. 6th St.

Suite 125

Austin, TX 78703

Telephone: (855) 344-3298

steve@hilliardshadowenlaw.com

matt@hilliardshadowenlaw.com

tmiranda@hilliardshadowenlaw.com

dmulligan@hilliardshadowenlaw.com

*Interim Co-Lead Counsel

Jayne A. Goldstein, Esq.*

MILLER SHAH LLP

1625 N. Commerce Parkway

Suite 320
Ft. Lauderdale, FL 33326
Direct Dial: 954-903-3170
954-515-0123
jagoldstein@millershah.com
*Interim Co-Lead Counsel

Natalie Finkelman Bennett
MILLER SHAH LLP
1845 Walnut St., Suite 806
Philadelphia, PA 19103
P: (866) 540-5505
nfinkelman@millershah.com

Laurie Rubinow
MILLER SHAH LLP
875 Third Avenue, Suite 800
New York, NY 10022
Telephone: (212) 419-0156
lrubinow@millershah.com
Interim Liaison Counsel

Kenneth A. Wexler*
Kara A. Elgersma
Justin Boley
Tyler Story
WEXLER BOLEY & ELGERSMA LLP
55 W. Monroe Street, Suite 3300
Chicago, IL 60603
Telephone: (312) 346-2222
Facsimile: (312) 346-0022
kaw@wexlerwallace.com
kae@wexlerwallace.com
jnb@wexlerwallace.com
tjs@wexlerwallace.com
* Interim Co-Lead Counsel

Michael M. Buchman*
MOTLEY RICE LLC
777 Third Avenue, Fl 27
New York, New York 10017
Telephone: (212) 577-0040
MBuchman@motleyrice.com
*Interim Co-Lead Counsel

Sharon K. Robertson

Donna M. Evans
Aaron J. Marks
COHEN MILSTEIN SELLERS & TOLL, PLLC
88 Pine Street, 14th Floor
New York, NY 10005
Telephone: (212) 838-7797
Facsimile: (212) 838-7745
srobertson@cohenmilstein.com
devans@cohenmilstein.com
amarks@cohenmilstein.com

Counsel for the proposed end-payor class

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on May 20, 2024.

Dated: May 20, 2024

/s/ Matthew C. Weiner
Matthew C. Weiner